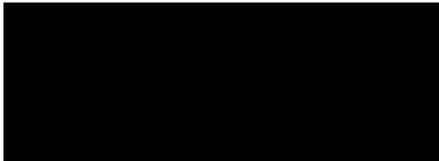


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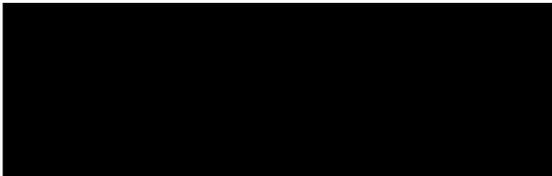
FILE: WAC 04 253 53420 Office: CALIFORNIA SERVICE CENTER Date: **OCT 04 2007**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be withdrawn and the petition will be approved.

The petitioner manufactures clothing and accessories. It seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B, with counsel's brief; (6) the AAO's decision to dismiss the appeal; and (7) counsel's motion to reopen. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) consistently interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a part-time accountant. Evidence of the beneficiary's duties includes: the petitioner's August 30, 2004 letter in support of the petition and the petitioner's October 24, 2004 response to the director's request for evidence. As stated by the petitioner, the proposed duties are as follows:

- Compile and analyze information using accounting software solutions for documenting business transactions, and prepare entries to accounts such as general ledger (20% of time);
- Analyze financial information detailing assets, liabilities, and capital for the preparation of balance sheets, profit and loss statements, and other reports (10% of time);
- Process, maintain and monitor daily accounts payable and accounts receivable records, reconcile bank statements, update journal entries, adjustments, and month-end reports (20% of time);
- Prepare comparative analysis to show comparison of various import transactions from different countries, price movements, and revenues generated from such transactions (15% of time);

- Prepare and monitor daily projected and actual cash flow, prepare and submit semi-monthly payroll information to ADP and periodic profit and loss statements for internal, external, and income tax reporting purposes (10% of time);
- Audit contracts, orders, vouchers, daily receipts, inventories, and employee compensation (10% of time);
- Conduct studies and submit recommendations for improving accounting operations (10% of time); and
- Make recommendations regarding the accounting of assets and expenditures, document and assist in the implementation of accounting systems and controls (5% of the time).

The director found that the proffered position, which resembles the positions of bookkeeping, accounting, and auditing clerks, does not require a bachelor's degree. The director also found that the petitioner did not have the organizational complexity to require the services of an accountant. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In its April 26, 2006 decision, the AAO found that although the proffered position is similar to that of a management accountant, the petitioner had submitted insufficient financial information pertaining to the petitioner and to the specific performance of the proposed duties to demonstrate that the proffered position requires a related bachelor's degree or an equivalent thereof. The AAO found that the financial information provided by the petitioner actually pertains to Unitex Industries, Inc. and does not relate to the petitioner. The AAO concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel states, in part, that the petitioner clearly delineates that the proffered position is that of an accountant, not a bookkeeper. Counsel also states that the petitioner already employs an accounting clerk and utilizes a software program to handle its bookkeeping needs. Counsel submits the petitioner's 2003 federal income tax return reflecting more than \$49 million in gross receipts or sales, and more than \$1 million paid in salaries and wages, thereby demonstrating the petitioner's need of a part-time accountant.

The AAO concurs with counsel that the proffered position is a specialty occupation. In this case, the proffered position is that of a part-time accountant for the petitioning entity, which is a manufacturer of clothing and accessories, with 15 employees and more than \$49 million in gross receipts or sales. A review of the *Handbook*, 2006-07 edition, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Therefore, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be sustained, and the petition will be approved.

As the evidence of record also establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration with a major in accounting, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the previous decision shall be withdrawn and the petition will be approved.

ORDER: The decision of the AAO, dated April 26, 2006, is withdrawn. The petition is approved.